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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5696 OF 2006

Motilal Manshi Shah .. Petitioner
Vs.
Smt.Hazarabai Riyazuddin .. Respondent.

Mr.Yatin R.Shah and Ashutosh M.Dube for petitioner.
Mr.V.Y.Sanglikar for respondent.

CORAM : J.H. BHATIA, J.

DATE : 12TH OCTOBER, 2007.

P.C. :-

. Heard learned counsel for parties.

2. The petitioner had filed R.A.D.Suit no.446 of 1996 in the court of Small Causes Court at Bandra, Mumbai seeking perpetual injunction restraining the defendant land lady from disturbing his possession, in respect of shop no.4 and 5 described in Exh. "A" annexed to the plaint. As per the contention in paragraph 1 of the plaint, the suit premises i.e. shop no. 4 and 5 situated on the ground floor of Riyaz House, both admeasuring 390 sq. ft. or thereabout described in Exh.B. As per the said sketch Exh.B,

infront of the said shop there is foot path and beyond that there is a road. The defendant in the written statement denied that the plaintiff was in possession of 390 sq. feet area. It was contended that the area of the suit shop was 251 sq.ft. and the tenancy of the plaintiff was terminated in the year 1991. It was also contended that the plaintiff was trying to show the area of the suit shops as 390 sq. ft. just to make encroachment on the area of 120 sq. feet infront of the shop. The written statement was filed in November, 1999. In April-2004, the plaintiff filed an affidavit in examination in chief and he was also cross examined. In the cross examination attempt was made to show that the area of the shop was only 251 sq.ft. as per the written statement and not 390 sq. ft. as contended by the plaintiff. It appears that in his affidavit he tried to state that he was paying rent of Rs.160/- for the shop and Rs.30/- for the open area infront of the same which is described as Otla. On November, 2005 the plaintiff filed an application for amendment of the plaint. This amendment was just to make his pleadings consistent his affidavit filed in examination in chief. The application was opposed on the ground that plaintiff was trying to make out a new case after having come to know that as original case is contrary to the sanctioned plan. The learned trial court also

rejected the application for amendment.

3. After going through the original plaint of the plaintiffs, the affidavit filed in examination in chief and the application for amendment, and taking into consideration the fact that the amendment application was filed about 9 years after filing the suit and long after filing the affidavit in examination in chief and also substantial cross examination, it appears that this was only in attempt to fill in the lacuna and to make out a new case. The learned counsel for the petitioner relied upon **Vijaykumar Narayanrao Dixit v/s. Uday Griha Nirman Samasya Niwarak Sanstha, Nagpur, 2006(3)Mh.L.J.676** in support of his contention that if the proper details have not been given in the plaint by mistake of an advocate, the same can be allowed to be amended when the mistake is detected. The facts of this case are totally different. Taking into consideration the facts of the present case, I find no substance in the petition.

4. In the result the petition stands dismissed.

(J.H.BHATIA, J)